

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

FRANCESCA AMATO,

Plaintiff,

1:21-cv-00860
(GLS/TWD)

v.

ANTHONY McGINTY,

Defendant.

APPEARANCES:

FRANCESCA AMATO

Plaintiff, *pro se*

THÉRÈSE WILEY DANCKS, United States Magistrate Judge

DECISION AND ORDER

Currently before the Court is Plaintiff's third application to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915. (Dkt. No. 13.) Previously, by Orders filed October 28, 2021, and November 17, 2021, this Court denied Plaintiff's first and second IFP applications as incomplete. (Dkt. Nos. 8, 11.) Specifically, in the November 17, 2021, Order, it stated:

In order for the Court to properly evaluate Plaintiff's financial status, and because Plaintiff has previously submitted two incomplete IFP applications (Dkt. Nos. 2, 9), Plaintiff must complete AO Form 239 (IFP – Long Form), which includes specific categories of both income and expenses to assist Plaintiff in providing complete responses.

Id. at 2.¹ As such, it was:

ORDERED that by **TUESDAY, DECEMBER 7, 2021**, Plaintiff must file a properly completed form AO 239 (IFP – Long Form) to

¹ Citations to filings on the docket refer to the pagination CM/ECF automatically generates.

proceed IFP, with a full disclosure of her assets, income, and expenses, including any money she has in savings or checking accounts or in cryptocurrency, as indicated in the form provided or pay the \$402.00 filing fee; and it is further

ORDERED that Plaintiff's failure to comply with the terms of this Order will result in an administrative closure of this case without further notice[.]

Id. at 2.² Despite the foregoing, Plaintiff filed her pending third application to proceed IFP on December 13, 2021, almost one week after the Court-ordered deadline of December 7, 2021, and inexplicably submitted an outdated "Short Form" (from 5/2005) and failed to utilize the AO 239 (IFP – Long Form) provided by the Clerk. (Dkt. No. 13.) Moreover, not only did Plaintiff fail to comply with the Court's Orders, but her third IFP application is once again incomplete.

To that end, Plaintiff reports she is currently employed but does not state the amount of her take-home salary or wages and pay period and omits the name and address of her employer.

Id. at ¶ 2. Instead, she states, "I own a non-profit I submitted my taxes I am in poverty status" and writes "Expired". *Id.* Plaintiff states that in the past twelve months, she has not received money from any of the following sources.

- (a) Business, profession, or other self-employment
- (b) Rent payments, interest, or dividends
- (c) Pension, annuity, or life insurance payments
- (d) Disability, or worker's compensation payments
- (e) Gifts, or inheritances
- (f) Any other sources

Id. at ¶ 3. Yet she reports \$600 in her checking account and rent expenses of \$1000. *Id.* at ¶ 4.

While not entirely clear and in part due to her illegible handwriting, it appears she contributes "anywhere" from \$300-\$500 to support C.A.B. *Id.* at ¶ 6. On the back of the form, she

² To assist Plaintiff, a copy of the AO Form 239 (IFP – Long Form) was attached to that Order. (Dkt. No. 11 at 4-8.)

handwrites, “We had money it’s been years of this. We were used to a certain income and we barely make it now!” *Id.* at 2.

A court may grant IFP status if a party “is *unable* to pay” the standard fee for commencing an action. 28 U.S.C. § 1915(a)(1) (emphasis added). Considering the foregoing, Plaintiff’s third IFP application is incomplete and does not cure the deficiencies identified in the previous Orders. (Dkt. Nos. 8, 11.) Therefore, Plaintiff’s third IFP application is denied. (Dkt. No. 13.) Consequently, no determination as to the sufficiency of the amended complaint has been made at this time.

Nonetheless, in deference to Plaintiff’s *pro se* status, and because Plaintiff has submitted three incomplete IFP applications, the Court will afford Plaintiff **one final opportunity** to complete and submit AO Form 239 (IFP – Long Form), which includes specific categories of both income and expenses to assist Plaintiff in providing complete responses.³

In sum, if Plaintiff wishes to proceed with this action, she must fully complete and submit the attached AO Form 239 (IFP – Long Form) or pay the \$402.00 filing fee by Thursday, January 6, 2022.

WHEREFORE, it is hereby

ORDERED that Plaintiff’s third IFP application (Dkt. No. 13) is **DENIED**, and it is further

ORDERED that by **THURSDAY, JANUARY 6, 2022**, Plaintiff must file a properly completed AO Form 239 (IFP – Long Form) to proceed IFP, with a full disclosure of her assets, income, and expenses, including any money she has in savings or checking accounts or in

³ A copy of required AO Form 239 (IFP – Long Form) is attached to this Order.

cryptocurrency, as indicated in the attached form provided or pay the \$402.00 filing fee; and it is further

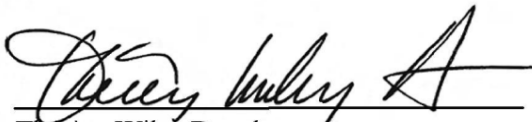
ORDERED that if Plaintiff files the required IFP – Long Form, or pays the full filing fee within the required time period, the Clerk is directed to return the file to this Court for review of the fourth IFP application and/or screening of the amended complaint;⁴ and it is further

ORDERED that Plaintiff is also required to promptly notify the Clerk’s Office, in writing, of any change in her address;⁵ and it is further

ORDERED that **PLAINTIFF’S FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER WILL RESULT IN AN ADMINISTRATIVE CLOSURE OF THIS CASE WITHOUT FURTHER NOTICE**; and it is further

ORDERED that the Clerk mail a copy of this Order to Plaintiff at the address listed on the docket and to mail a one-time courtesy copy of this Order to the confidential and redacted address indicated on the envelope of Dkt. No. 13, and as verbally provided to the Clerk on December 1, 2021.

Dated: December 16, 2021
Syracuse, New York


Therese Wiley Dancks
United States Magistrate Judge

⁴ “A district court has the inherent authority to dismiss an action that lacks an arguable basis either in law or in fact, regardless of whether the plaintiff has paid the filing fee.” *MacKinnon v. City of N.Y./Human Res. Admin.*, 580 F. App’x 44, 45 (2d Cir. 2014) (summary order) (cleaned up).

⁵ The Court notes the mailing of Dkt. No. 8 to the address on file was returned to the Court as undeliverable. (Dkt. No. 10.) The mailing of Dkt. No. 11 was also returned to the Court as undeliverable. (Dkt. No. 12.) Under this Court’s local rules of practice, an unrepresented litigant is under a duty to inform the Court of any address changes IN WRITING. *See* N.D.N.Y. L.R. 10.1(c)(2). For the orderly disposition of cases, it is essential that litigants honor their continuing obligation to keep the Court informed of address changes. In an extraordinary display of special solicitude to Plaintiff as a *pro se* litigant, the Clerk is also directed to mail a one-time courtesy copy of this Order at the confidential and redacted address indicated on the envelope of Dkt. No. 13 and as verbally provided to the Clerk on December 1, 2021.

AO 239 (Rev. 01/15) Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)

UNITED STATES DISTRICT COURT

for the

| | | |
|--|-----------------------|------------------------|
| _____ <i>Plaintiff/Petitioner</i> v. _____ <i>Defendant/Respondent</i> |))))) | Civil Action No. _____ |
|--|-----------------------|------------------------|

**APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS
(Long Form)**

| | |
|--|---|
| <p>Affidavit in Support of the Application</p> <p>I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested. I declare under penalty of perjury that the information below is true and understand that a false statement may result in a dismissal of my claims.</p> <p>Signed: _____</p> | <p>Instructions</p> <p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: _____</p> |
|--|---|

- For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

| Income source | Average monthly income amount during the past 12 months | | Income amount expected next month | |
|--|---|--------|-----------------------------------|--------|
| | You | Spouse | You | Spouse |
| Employment | \$ | \$ | \$ | \$ |
| Self-employment | \$ | \$ | \$ | \$ |
| Income from real property <i>(such as rental income)</i> | \$ | \$ | \$ | \$ |
| Interest and dividends | \$ | \$ | \$ | \$ |
| Gifts | \$ | \$ | \$ | \$ |
| Alimony | \$ | \$ | \$ | \$ |
| Child support | \$ | \$ | \$ | \$ |

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| | | | | |
|--|----|-------------|----|-------------|
| Retirement (such as social security, pensions, annuities, insurance) | \$ | \$ | \$ | \$ |
| Disability (such as social security, insurance payments) | \$ | \$ | \$ | \$ |
| Unemployment payments | \$ | \$ | \$ | \$ |
| Public-assistance (such as welfare) | \$ | \$ | \$ | \$ |
| Other (specify): | \$ | \$ | \$ | \$ |
| Total monthly income: | \$ | 0.00 | \$ | 0.00 |
| | \$ | 0.00 | \$ | 0.00 |
| | \$ | 0.00 | \$ | 0.00 |
| | \$ | 0.00 | \$ | 0.00 |

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of employment | Gross monthly pay |
|----------|---------|---------------------|-------------------|
| | | | \$ |
| | | | \$ |

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of employment | Gross monthly pay |
|----------|---------|---------------------|-------------------|
| | | | \$ |
| | | | \$ |
| | | | \$ |

4. How much cash do you and your spouse have? \$ _____

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

| Financial institution | Type of account | Amount you have | Amount your spouse has |
|-----------------------|-----------------|-----------------|------------------------|
| | | \$ | \$ |
| | | \$ | \$ |
| | | \$ | \$ |

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

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5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

| Assets owned by you or your spouse | |
|---|----|
| Home (<i>Value</i>) | \$ |
| Other real estate (<i>Value</i>) | \$ |
| Motor vehicle #1 (<i>Value</i>) | \$ |
| Make and year: | |
| Model: | |
| Registration #: | |
| Motor vehicle #2 (<i>Value</i>) | \$ |
| Make and year: | |
| Model: | |
| Registration #: | |
| Other assets (<i>Value</i>) | \$ |
| Other assets (<i>Value</i>) | \$ |

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

| Person owing you or your spouse money | Amount owed to you | Amount owed to your spouse |
|--|---------------------------|-----------------------------------|
| | \$ | \$ |
| | \$ | \$ |
| | \$ | \$ |

7. State the persons who rely on you or your spouse for support.

| Name (or, if under 18, initials only) | Relationship | Age |
|--|---------------------|------------|
| | | |
| | | |
| | | |

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8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

| | You | Your spouse |
|---|-----|-------------|
| Rent or home-mortgage payment <i>(including lot rented for mobile home)</i> Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No | \$ | \$ |
| Utilities <i>(electricity, heating fuel, water, sewer, and telephone)</i> | \$ | \$ |
| Home maintenance <i>(repairs and upkeep)</i> | \$ | \$ |
| Food | \$ | \$ |
| Clothing | \$ | \$ |
| Laundry and dry-cleaning | \$ | \$ |
| Medical and dental expenses | \$ | \$ |
| Transportation <i>(not including motor vehicle payments)</i> | \$ | \$ |
| Recreation, entertainment, newspapers, magazines, etc. | \$ | \$ |
| Insurance <i>(not deducted from wages or included in mortgage payments)</i> | | |
| Homeowner's or renter's: | \$ | \$ |
| Life: | \$ | \$ |
| Health: | \$ | \$ |
| Motor vehicle: | \$ | \$ |
| Other: | \$ | \$ |
| Taxes <i>(not deducted from wages or included in mortgage payments) (specify):</i> | \$ | \$ |
| Installment payments | | |
| Motor vehicle: | \$ | \$ |
| Credit card <i>(name):</i> | \$ | \$ |
| Department store <i>(name):</i> | \$ | \$ |
| Other: | \$ | \$ |
| Alimony, maintenance, and support paid to others | \$ | \$ |

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| | | |
|--|-------------|-------------|
| Regular expenses for operation of business, profession, or farm (<i>attach detailed statement</i>) | \$ | \$ |
| Other (<i>specify</i>): | \$ | \$ |
| Total monthly expenses: | \$ | \$ |
| | 0.00 | 0.00 |

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you spent — or will you be spending — any money for expenses or attorney fees in conjunction with this lawsuit? Yes No

If yes, how much? \$ _____

11. Provide any other information that will help explain why you cannot pay the costs of these proceedings.

12. Identify the city and state of your legal residence.

Your daytime phone number: _____

Your age: _____ Your years of schooling: _____

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